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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

IN RE G. V., a Person Coming Under the
Juvenile Court Law.

H034665

(Santa Clara County
Super. Ct. No. JV33669)

THE PEOPLE,

Plaintiff and Respondent,

v.

G. V.,

Defendant and Appellant.

The minor G. V. appeals from a juvenile court order dismissing a probation violation matter but continuing the minor on probation for the underlying matter due to an outstanding balance on its disposition order to pay victim restitution. The minor contends that he is entitled to have the underlying matter dismissed pursuant to the agreement he signed in order to participate in the Juvenile Treatment Court (JTC) drug program. As we disagree with the minor's contention, we will affirm the court's order.

BACKGROUND

On October 16, 2007, the minor and a schoolmate assaulted a teacher on campus. The minor punched the victim in the face with his closed fist, and the two of them wrestled on the ground. Afterwards, the minor ran off campus but was stopped by staff. The victim sustained a cut lip, blurred vision, and pain to his neck and left temple, and was transported to the hospital for medical treatment. The minor was taken into custody. The district attorney filed petition No. JV33669 under Welfare and Institutions Code section 602¹ on October 18, 2007, alleging that the minor, then age 16, committed felony battery on a school employee (Pen. Code, §§ 242, 243.6). At the jurisdiction hearing on November 6, 2007, the petition was amended to allege the offense as a misdemeanor, and the minor admitted the allegations in the petition as amended. On November 28, 2007, the court declared the minor to be a ward of the court and placed him on probation with various terms and conditions, including that he attend school regularly, enroll in and complete a drug/alcohol education program, complete 30 hours of public service work by February 28, 2008, not possess any gang-related clothing, and pay restitution to the victim “in full on or before the end of Probation.”

Following a contested restitution hearing on December 19, 2007, the court ordered the minor to pay \$448 in victim restitution, and stated that the probation officer could put the matter back on calendar “if problems exist” regarding restitution. The court informed the minor’s mother that she was liable for the ordered restitution amount along with the minor, and that she could get a payment schedule from the Department of Revenue. The minor’s mother stated that she would be able to pay the amount ordered. The court found that the minor and his parent had the ability to pay the ordered amount, and again ordered that payment was to be made in full on or before the end of probation.

¹ Further unspecified statutory references are to the Welfare and Institutions Code.

On April 25, 2008, the probation department filed a notice under section 777, alleging that the minor possessed gang-related clothing on December 26, 2007; accumulated 42 unexcused absences from school since February 11, 2008; failed to complete 30 hours of public service by February 28, 2008; and failed to attend drug and alcohol counseling on a regular basis. On June 4, 2008, the minor admitted violating his probation as alleged in the notice, which was designated as “pet. B.” At the disposition hearing on June 25, 2008, the court continued the minor as a ward of the court and committed him to juvenile hall for 98 actual days. The court then stayed the commitment and released the minor on the electronic monitoring program. All previous orders of the court not inconsistent with the current orders were to remain in full force and effect. The court vacated the juvenile hall commitment order at a review hearing on August 27, 2008, but continued the minor on electronic monitoring.

On November 20, 2008, the probation department filed a new notice under section 777, alleging that the minor had violated probation by testing positive for marijuana four times, cocaine one time, and PCP one time in October and November 2008; being cited for possessing gang paraphernalia and providing a false name to a police officer on November 3, 2008; failing to attend school on October 1, 2008, and having numerous unverified absences for first period; and failing to complete 30 hours of community service. On December 15, 2008, the minor admitted violating his probation as alleged in the notice, which was designated as “ ‘notice’ C.” At the disposition hearing on December 22, 2008, the court referred the minor for screening/assessment for JTC.

On January 9, 2009, the minor, his counsel, the court, and the minor’s mother signed a JTC “Disposition Agreement” relating to the “Petition No. J33669C” regarding “W&I 777 misd” charges with “various” offense dates. The agreement stated in part, “I understand that the Court will be staying time in Juvenile Hall or the Juvenile Rehabilitation Facility (the Ranch) as an incentive for me to graduate from JTC. I also

understand that the Court will be staying other terms of my probation such as fines and fees. If I graduate from JTC, my probation will be terminated and the stayed portion of my probation will not be imposed. I will not have to serve the stayed custody time.” The court continued the matter to January 22, 2009. On January 22, 2009, the court continued the minor as a ward of the court, set attorneys fees at \$100 but stayed the order, and continued the matter for a JTC review hearing. All previous orders of the court not inconsistent with the current orders were to remain in full force and effect.

At the minor’s first JTC review hearing on February 5, 2009, the probation officer reported that the minor was attending treatment and enrolled in school, so the probation officer would not oppose the minor’s release from the electronic monitoring program. The court removed the minor from the electronic monitoring program and set the matter for another JTC review on February 26, 2009. On February 26, 2009, the probation officer reported that the minor was participating in treatment and attending school, so the probation officer recommended that the minor be promoted to phase II of the JTC program. The court advanced the minor to phase II and set the matter for another review on March 26, 2009.

On March 26, 2009, the probation officer reported that the minor had missed several probation appointments, several days of school, and several treatment groups due to illness, but the absences had been excused. The court set the matter for another review on April 23, 2009. On April 23, 2009, the probation officer reported that the minor was not attending school on a regular basis, and was not attending his treatment program. Therefore, the probation officer recommended that the minor be detained in Juvenile Hall for the weekend, and that the minor be terminated from JTC if he did not “get on track with JTC requirements” by the next review. The court remanded the minor to Juvenile Hall for the weekend and set the matter for another review on May 21, 2009.

On May 21, 2009, the probation officer reported that the minor was again attending his treatment program and attending school on a daily basis. He was also

reporting to probation as instructed and providing clean urinalysis samples. Therefore, the probation officer recommended that the minor be advanced to phase III of the JTC program. The court advanced the minor to phase III and set the matter for another review on June 25, 2009. On June 25, 2009, the probation officer reported that the minor was attending his treatment program and reporting to probation as instructed. He was also attending summer school. Therefore, the probation officer would recommend that the minor graduate from the JTC program at the next review if he continued to do well. The court set the new review for July 30, 2009.

On July 30, 2009, the probation officer reported that the minor had completed all the requirements of the JTC program and was ready to graduate. The minor's counsel asked "to address the restitution issue." The court stated that there was "a small amount of restitution still owing," and it proposed keeping the minor on probation "in order to pay that off." Counsel "move[d] the court to dismiss the minor from probation because that's the contract that the minor and the court signed." Counsel acknowledged that the restitution amount was \$448, that "it was previously ordered on the A petition," and that "the minor is not in J-T-C . . . on that A petition." However, counsel argued, neither the minor nor his family had the ability to pay the ordered restitution, and "it violates the equal protection clause of the 14th Amendment to the United States [Constitution] to continue a minor on probation due to his poverty." The court stated that "the issue of the ability to pay should have been resolved at the time that order was made, not at the time that you're moving to dismiss probation." The district attorney argued that the restitution amount was ordered after a contested restitution hearing on December 19, 2007. The court graduated the minor from the JTC program, but did not dismiss probation, and continued the matter for a contested hearing on counsel's motion.

On July 31, 2009, the minor filed a motion to dismiss probation pursuant to the JTC contract and the equal protection clause of the 14th Amendment of the federal Constitution. The district attorney filed opposition to the motion on August 17, 2009.

Attached to the opposition was a transcript of the December 19, 2007 restitution hearing. At the continued hearing on August 26, 2009, the court found that “[t]his is a relatively small amount of money. If [the minor] had even a minimum wage job, he could pay off this money over the amount of time he’s had, and the amount of time he still has.” The court concluded that “payment of [restitution] was a condition of probation. It’s been a condition of probation since [the minor] first went on probation on the ‘A’ petition. So the issue of restitution remains outstanding. [The minor] still owes the \$448, and probation is not dismissed and the motion is denied.”

The minor has appealed from the court’s denial of his motion to dismiss probation at the July 30 and August 26, 2009 hearings.

DISCUSSION

In his opening brief, the minor contends that he entered into a written contract in which the juvenile court promised to terminate probation if he graduated from the JTC program. However, after he graduated from the program, the court refused to uphold its contractual obligation to terminate his probation. Therefore, the court breached the contract and abused its discretion by refusing to terminate his probation.

Respondent contends that “the JTC agreement went solely to the B and C Welfare and Institutions Code section 777 probation violation petitions or notices. The JTC agreement did not go to, and was not entered into, for the Welfare and Institutions Code section 602 delinquency petition (petition A) for the battery for which [the minor] originally was placed on probation and ordered to pay restitution years earlier.” “Inasmuch as the JTC agreement had no application to [the minor’s] placement on probation for the A petition, [the minor’s] probation on that petition was unaffected by the terms of the JTC agreement.”

In his reply brief, the minor contends that “any and all petitions filed pursuant to section 777 and admitted by [the minor] did not give rise to new and separate grants of probation, but modifications to the grant of probation already in place as a result of the

original petition filed pursuant to Welfare [and] Institutions Code section 602. Thus, it makes no sense to say, as does respondent, that the contract applied only to the section 777 petitions as they refer to the same grant of probation that was originally imposed.”

A section 602 matter begins when the district attorney files a petition under that statute. (§§ 650, subd. (c), 681, subd. (a); *In re Eddie M.* (2003) 31 Cal.4th 480, 487 (*Eddie M.*)). The petition states which penal laws were violated and whether the offenses are felonies or misdemeanors. (§§ 656, subd. (f), 656.1; *Eddie M.*, *supra*, 31 Cal.4th at p. 487.) Once the juvenile court finds beyond a reasonable doubt that a criminal offense has been proved (§ 701), the court may place the minor on probation. (*Eddie M.*, *supra*, at p. 487.)

All juvenile court orders may be modified “as the judge deems meet and proper.” (§ 775.) Thus, the court has discretion to modify dispositional orders that have not succeeded in rehabilitating the affected minor. (§§ 777-779; *Eddie M.*, *supra*, 31 Cal.4th at p. 489.) A notice under section 777 initiates a probation violation procedure in which no criminal offense is alleged. (*Eddie M.*, *supra*, at p. 490.) If a violation of a condition of probation is found, the juvenile court may modify its disposition order and order, at most, a more restrictive juvenile placement. (*Eddie M.*, *supra*, at pp. 485, 489; *John L. v. Superior Court* (2004) 33 Cal.4th 158, 165.) Generally speaking, juvenile courts follow section 777 procedures by hearing evidence as to the efficacy of the prior disposition, considering whether the prior disposition order had failed, and determining if a more restrictive level of confinement is necessary to the minor’s rehabilitation. (*In re Jorge Z.* (1997) 54 Cal.App.4th 223, 236.) “After hearing evidence, the court must reassess the disposition in light of the then prevailing circumstances.” (*Id.* at p. 233.)

“A juvenile court enjoys broad discretion to fashion conditions of probation for the purpose of rehabilitation and may even impose a condition of probation which would be unconstitutional or otherwise improper so long as it is tailored to specifically meet the

needs of the juvenile. [Citations.] That discretion will not be disturbed in the absence of manifest abuse.” (*In re Tanya B.* (1996) 43 Cal.App.4th 1, 7, overruled on another point by *In re Justin S.* (2001) 93 Cal.App.4th 811, 812; see also *In re Tyrell J.* (1994) 8 Cal.4th 68, 81, overruled on another point by *In re Jaime P.* (2006) 40 Cal.4th 128, 130.)

In this case, the juvenile court placed the minor on probation for battery on November 28, 2007, with various terms and conditions, including that he pay victim restitution before the end of his probationary period. Following a contested restitution hearing on December 19, 2007, the court set the restitution amount at \$448 and found that the minor and his parent had the ability to pay that amount. After the minor admitted on June 4, 2008, and December 15, 2008, that he had violated some of the conditions of his probation, the court properly reassessed its original disposition order. On January 9, 2009, the court modified the terms of the minor’s probation by, in part, agreeing to the minor’s participation in the JTC program. The JTC “Disposition Agreement” the court and the minor signed specified that probation will be terminated upon the minor’s graduation from JTC. However, the “Disposition Agreement” also specifically stated that it applied to the disposition of the “petition No. J33669C” regarding “W&I 777” allegations only. The minor’s counsel acknowledged that at the July 30, 2009 hearing. Some of the other terms and conditions of the minor’s original disposition order of probation on the section 602 matter were not stayed and remained, including that the minor pay victim restitution.

At the July 30, 2009 hearing, the minor graduated from the JTC program and the court terminated the other conditions of probation it had imposed regarding the section 777 matter, as promised in the JTC agreement the minor and the court had signed. The court refused to terminate probation on the section 602 matter, as the minor had not yet satisfied his agreement to pay \$448 in victim restitution. However, the court ordered a contested hearing on the minor’s request to review whether he had the ability to pay the

outstanding restitution amount. Following the contested hearing, the court found that the minor had the ability to pay the ordered amount. Given the broad discretion of the juvenile court on matters of probation, on this record we cannot say that the court abused its discretion by refusing to terminate the minor's probation on the section 602 battery matter at the July 30 and August 26, 2009 hearings.

DISPOSITION

The orders of July 30 and August 26, 2009, are affirmed.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

MCADAMS, J.